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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,970	05/14/2001	Gary Zeik	8236-3	9096

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EXAMINER

NGUYEN, CHI Q

ART UNIT PAPER NUMBER

3635

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,970

Applicant(s)

ZEIK ET AL.

Examiner

Chi Q Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-40 is/are allowed.
- 6) ☒ Claim(s) 1,5-29,41-48,50 and 53-63 is/are rejected.
- 7) ☒ Claim(s) 2-4,49,51 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This Office action is in response to the applicant's amendment filed on 9/6/03.

Claim Objections

Claim 9 is objected to because of the following informalities: "the weight of the second plurality of modules" does not have antecedent basis. Appropriate correction is required.

Claim 30 is objected to because the phrase "would be" renders the claim indefinite since the resulting claim does not clearly set for the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed language in claim 1 is confusing because the claimed preamble sets forth a modular structure not for a building. Therefore, a central treatment, an area outside the central treatment area, a roof, and a floor in claims 5, 6, 10, are inconsistent. Clarification is required.

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Claims 1, 5-11, 12-19, 20-29, 41-48, 50 and 53-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillmore (US 5,832,676) in view of Brent (US 5,695,443).

In regard to claims 1, 5-11, 41-48, 50, and 53, Gillmore discloses a building structure 100 comprises plurality of modules 110, 120, 130, 140 having a roof. The modules 110-140 having a support frame structure 200 is made from aluminum tubing, a barrier comprises walls 261, 264, a door 149. Each of the modules have a major axis, which are horizontal 114, a vertical 112 axis defined along their length and the major axes of the first plurality of modules are substantially parallel to each other and the major axes of the second plurality of modules are substantially parallel to each other, the major of the second plurality of modules are substantially perpendicular to the major axes of the first plurality of modules are substantially perpendicular to the major axes of the first plurality of modules, the plurality of modules are coupled to a foundation 240 and the barrier 261, 264 about the foundation (figs. 1-2).

Gillmore does not disclose expressly the barrier including first and second spaced rigid walls and a quantity of radiation shielding filler, the roof comprising a rigid floor supporting a quantity of radiation shielding filler material above the central treatment area, the second plurality of modules over the barrier formed by the first plurality of modules are in fluid communication with the barrier such that radiation shielding filler material provided into the roof barrier can flow into the barrier. Brent teaches high-energy radiation emission shelter comprising a module having two major components 12, 14 together serve as a barrier including first, second spaced rigid

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walls and a quantity of radiation shielding filler material 18 in between the two walls, a roof 72 having a rigid floor 42 supporting a quantity of radiation shielding filler 18 in the fluid communication, which the radiation shielding filler flow into the barrier (figs. 3-4). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Gillmore's modular structure with Brent for the barrier including first, the second spaced rigid walls and the quantity of radiation shielding filler material between two walls and the roof having the rigid floor with the radiation shielding filler communicated with the wall barrier. The motivation for doing so would have been to provide more accurate control of the radiation emission from the medical devices would be escaped through wall or roof barriers.

In regard claims 12-19, Gillmore and Brent teach the structural elements for the modules with radiation shield barrier as stated except for the modules each have a length not exceeding about 53' a width not exceeding about 14', and a height not exceeding about 13'6". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the specific dimensions for the module, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. The motivation for doing so would have been to have a right dimension for a desirable application.

In regard claims 20-29, 54-63, Gillmore and Brent teach the structural elements for the modules with radiation shield barrier as stated except for the method of assembly the building modules, examiner considers this to be the obvious method of

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setting up the device because in forming a building by using modular structures, one must obviously transported a plurality of modules to construction site, position the plurality of modules on a foundation, each of the modules having inner, outer walls, fill with radiation material in between the walls. Gillmore and Brent would be motivated to follow these steps to facilitate assembly to make the building or shelter.

Allowable Subject Matter

Claims 2-4, 49, and 51-52 were previously objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 30-40 were previously allowed.

Response to Arguments

Applicant's arguments filed 9/22/03 have been fully considered but they are not persuasive. With regard to the applicant's argument that there is not suggestion to combine the references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make to proposed combination of primary and secondary references. However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971) references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, although Gillmore does not teach high

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energy radiation source protection material related; however Gillmore does teach the transportable modular structures having walls, roof, foundation, etc. Combining with Brent for teaching high-energy radiation protection material for the intended use purposes such as hospital. Therefore the examiner believes it's proper to combine Gillmore and Brent for intended used applications.

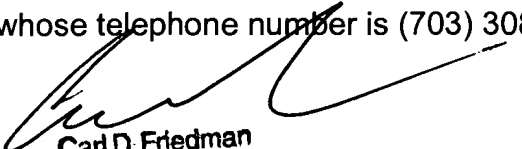
In regard to the applicant's argument that there is no reference to medical equipment mounted on a separately removable portion of a module for removal and replacement of the medical equipment without substantially disturbing the barrier (claims 46 or 48) and the action also fails to point to area outside the central treatment area adapted to form rooms suitable for human occupation (claim 10). As stated, the limitations "to form a central treatment area; medical equipment inside the treatment area..." are not positively claimed since the claim 1 sets forth only a modular structure (see also the rejections above).

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

CDW
4/6/01


Carl D. Friedman
Supervisory Patent Examiner
Group 3600